

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, VIRUDHUNAGAR

**Present : Tmt.S.K.ANGALAESWARI, B.A., B.L.,
ADDITIONAL DISTRICT JUDGE,
VIRUDHUNAGAR.**

Tuesday, the 24th day of February, 2026

**I.A.No.08/2025
in
OS.No.02/2020**

M.Surendran

...Petitioner /9th Defendant

...Vs ...

1. V.Balaji

... 1st Respondent/Plaintiff

through the owner of Sri Jayavilas Agencies

2. M.Hemalatha

... 2 to 11 Respondents/

3. R.J.Maheshbabu

1 to 8, 10, 11 Respondents

4. S.Baskar

5. B.Sathya

6. K.Viswanath

7. B.Ananthakumar

8. N.Satheesh

9.S.Nagarogini

10. S.P.Lokan Karthick

11. P.Vignesh

This petition came up before me on 18.02.2026 for final hearing in the presence of Tmt.S.Tamilarasi, learned advocate for the Petitioner /9th Defendant and Thiru.I.Ramamoorthy, learned advocate for the 1st Respondent/Plaintiff and Thiru.J.Raguraman, learned advocate for the 2nd Respondent/1st Defendant and

endorsed that no counter, Respondents 3 to 10/Defendants 2 to 5, 7, 8, 10 are remained exparte and Thiru.T.Murugan, learned advocate for the 11th Respondent/11th Defendant and counter not filed and upon considering all material records in this case and having stood over till this day for my consideration, this court deliver the following . . .

ORDER

This Petition is filed under Order 9 Rule 7 of CPC by the Petitioner/9th Defendant to set aside the exparte order dated 25.03.2024 passed against them.

2) The averments of the Petition affidavit in brief are as follows:

The petitioner is the 9th Defendant in the original suit. The suit is posted for written statement on the side of petitioner on 25.03.2024. While he was going to consult with his Advocate with regarding to file a Written statement on that date, he suddenly fell ill and he could not do so. So he was unable to file a written statement on 25.03.2024. Now that he have recovered and have inquired about the case with his Advocate, since he had not appeared in the court on 25.03.2024. He had know from his advocate that a exparte order was passed against him without filing a written statement. On that basis, he has filed this petition. He has also filed a Written Statement on behalf him. The fact that he was unable to file a written statement in the suit that on 25.03.2024 was not intentional. Therefore, it is necessary to set aside the exparte order against the petitioner on 25.03.2024. Hence this petition.

3) The averments of the Counter affidavit filed by 1st Respondent in brief are as follows:

The Petition filed by the Petitioner is frivolous, vexatious, misleading and ill motivated and is neither maintainable in law nor on facts. The Petition ought to have been dismissed inlimine. Save such of those allegations that are herein expressly admitted all other allegations are denied as absolute false and fraudulent. The

petitioner have filed the Interlocutory Application in the court only with the malicious intention of delaying the original proceedings and thereby preventing the respondent from obtaining the original remedies in the original suit. On that basis, the petition of the petitioners is not acceptable to the court. It is not acceptable that the petitioner has deliberately not filed a written statement, despite had being given sufficient time to file a written statement in the original suit. He had not submitted the Medical certificate with regarding to his illness. With regarding the suit property, the petitioner who was already well aware of all the details regarding the Sale Agreement dated 01.02.2007 between the 1st defendant and the Plaintiff in the original suit, have subsequently purchased a portion of the suit property from the 1st defendant through fraudulent and malafide sale documents. In that regard, the sale regarding a portion of the suit property will not in any way bind the legal right of the plaintiff in the suit property. Having become well aware of these details, the petitioner have filed this petition. Therefore this petition should be dismissed with the cost.

4) **Point for consideration:**

Whether this petition is to be allowed or not?

5) **Points :**

i. Heard both side Arguments. Petition affidavit and Counter affidavit filed by the Petitioner and 1st Respondent and also records available in this case were perused.

ii. For sake of convenience the parties are arrayed as per their rank in the suit.

5.1) It is a contention of the 9th defendant that the plaintiff filed this suit for partition against the defendants. While the above suit in O.S.No.02/2020 posted for written statment on 25.03.2024, due to his illness he not filling the written statment. Hence they prayed before this court to allow this petition and their non appearance is neither wilful nor wanton.

5.2) On contrary to the above said submission the contention of the plaintiff that the application filed by the defendants with false information, fraudulent and ill motivated and concocted. The defendants have not explained their non appearance properly before this court and with an ulterior motive this petition was filed by the defendants to drag on the proceedings by prevent this plaintiff from enjoying the fruits of decree. Hence the learned counsel for the plaintiff contended that this petition filed by the defendants to set aside the ex parte order is not maintainable since it is not carry any merits.

5.3) By considering the overall facts and the circumstances of this case and by perusing the records this court finds that before going to the merit of the application it is just and necessary to extract a law namely Order 9 Rule 7 of Code of Civil Procedure hereunder,

7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.- Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

5.4) In the light of the above said provision it is crystal clear that under Order 9 Rule 7 CPC the court can permit the defendant to participate in the proceedings from the date they appear. Therefore there is No hard and fast rule can be laid down. Hence the reason assigned by the defendant in this petition is sustainable. In such cases an order awarding costs to the plaintiff would meet the ends of justice. Hence this court is inclined to allow the above petition with cost.

5.5) In the result, This petition will be allowed on payment of costs of Rs.1,000/- to the 1st respondent on or before 10.03.2026 Failing which this petition stands dismissed. Reporting compliance by then.

Dictated to the steno-typist, directly typed by her in the computer, corrected and pronounced by me in open court, on this the 24th day of February, 2026.

Additional District Judge,
Virudhunagar.

Witness and Exhibits on the side of the Petitioner: Nil

Witness and Exhibits on the side of the Respondent: Nil

Additional District Judge,
Virudhunagar.